

SERVED: August 27, 1992

NTSB Order No. EA-3654

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 12th day of August, 1992

_____)	
THOMAS C. RICHARDS,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-10582
v.)	
)	
ROBERT GLENN MARTIN,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

Respondent appeals from the oral initial decision of Administrative Law Judge William R. Mullins, issued in this proceeding on June 5, 1990 at the conclusion of an evidentiary hearing.¹ The law judge affirmed an order of the Administrator suspending respondent's ATP certificate for 30 days for his alleged violations of sections 61.3(c) and 91.9 of the Federal

¹A copy of the oral initial decision, an excerpt from the transcript, is attached.

Aviation Regulations (FAR), 14 C.F.R. Parts 61 and 91.² For the reasons discussed below, we will deny the appeal.

It is undisputed that on December 17, 1988, respondent, when he did not have in his possession, nor did he hold, a medical certificate, flew a T-6 aircraft with another individual aboard who was also a pilot.³ Respondent maintains on appeal, as he did before the law judge, that he did not need a medical certificate because the other pilot, not him, was the pilot-in-command. The law judge rejected respondent's position, holding, in effect, that aside from the fact that the other pilot was not qualified to be pilot-in-command of the aircraft, the weight of the evidence established that respondent was the pilot-in-command of the flight. We agree with the law judge's disposition of the issue.

²FAR sections 61.3(c) and 91.9 (currently 91.13(a)) state, in relevant part:

"§ 61.3 *Requirement for certificates, rating, and authorizations.*

* * * * *

(c) *Medical certificate.* Except for free balloon pilots piloting balloons and glider pilots piloting gliders, no person may act as pilot in command or in any other capacity as a required pilot flight crewmember of an aircraft under a certificate issued to him under this part, unless he has in his personal possession an appropriate current medical certificate issued under part 67 of this chapter. . . ."

"§ 91.9 *Careless or reckless operation.*

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another."

³Respondent was a Certified Flight Instructor, and, as such, could fly without a medical certificate as long as he was not the pilot-in-command of the flight.

In concluding that the other pilot on the flight was not qualified to be pilot-in-command, the law judge found unpersuasive the respondent's contention that, under FAR section 61.57(c), her currency in a non-tailwheel aircraft of the same category and class was sufficient.⁴ We agree with the law judge's interpretation, supported by the testimony of an FAA Aviation Safety Inspector, that for the other pilot to have been current in a T-6 she would have to have made in the preceding 90 days three takeoffs and landings to a full stop in a tailwheel airplane.⁵

We also agree with the law judge that the evidence abundantly shows that respondent was in fact the pilot-in-command of the flight. It is not disputed that while the other pilot operated the controls briefly during the flight, the respondent

⁴FAR section 67.57 reads, in relevant part:

"§ 61.57 *Recent flight experience: pilot in command.*

(c) *General experience.* No person may act as pilot in command of an aircraft, carrying passengers, nor of an aircraft certificated for more than one required pilot flight crewmember, unless within the preceding 90 days, he has made three takeoffs and three landings as the sole manipulator of the flight controls in an aircraft of the same category and class and, if a type rating is required, of the same type. If the aircraft is a tailwheel airplane, the landings must have been made to a full stop in a tailwheel airplane. For the purpose of meeting the requirements of the paragraph[,] a person may act as pilot-in-command of a flight under day VFR or day IFR if no persons or property other than as necessary for his compliance thereunder, are carried. This paragraph does not apply to operations requiring an airline transport pilot certificate or to operations conducted under Part 135 of this chapter."

⁵The other individual in the aircraft was current in a Cessna 172 which is in the same category and class as the T-6 but is not a tailwheel airplane. TR 79.

was the individual who had been given permission by the owner of the aircraft to fly it, that he sat in the front seat of the plane during the flight, which is the seat ordinarily occupied by the pilot-in-command of a T-6, that he started, taxied, and landed it, and that he made all of the communications with the tower. In view of these factors and the law judge's implicit rejection, as a matter of credibility, of respondent's assertions that he had advised the other pilot before the flight that she would be the pilot-in-command, we are not persuaded that the respondent has identified any valid basis for disturbing the law judge's decision.

ACCORDINGLY IT IS ORDERED THAT:

1. The respondent's appeal is denied;
2. The initial decision and the order of suspension are affirmed; and
3. The 30-day suspension of respondent's ATP certificate shall begin 30 days from the service of this order.⁶

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

⁶For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).